IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 131 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RABARI MITHA SANGA

Versus

DEPUTY COLLECTOR

Appearance:

MR HC BUCH for MR ND NANAVATI for the Petitioners
MRS HARSHA DEVANI, AGP for Respondent No. 1
MR RM PARMAR for Respondents Nos. 2-8

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/01/2003

ORAL JUDGEMENT

The present petition arises from the judgment and order dated 23rd July, 1984 passed by the learned Gujarat Revenue Tribunal (hereinafter referred to as 'the Tribunal') in Revision Application No.TEN.B.R.151/1982.

The dispute pertains to the land bearing Survey No.50 admeasuring 37 Acres and 3 Gunthas situated at village Eklera, Taluka Manavadar, District Junagadh (hereinafter referred to as 'the Land'). The Land originally was of the ownership of one Kumbhar Raghav Hira. On the appointed day i.e. 1st April, 1976, the said Kumbhar Raghav Hira was the owner of several parcels of land in all admeasuring 73 Acres. The proceedings under the Gujarat Agricultural Lands Ceiling Act, 1960 was initiated against the said Raghav Hira. The Mamlatdar and ALT, under his order dated 18th April, 1977, held that the holding of the said Raghav Hira was in excess of the ceiling limit by 15 Acres and 3 Gunthas. Pursuant to the option exercised by the said Raghav Hira, the land admeasuring 15 Acres and 3 Gunthas of the Land was declared to be surplus. Feeling aggrieved, the said Raghav Hira preferred Land Ceiling Appeal No.42/76-77 before the Deputy Collector, Porbandar. The said Appeal was dismissed on 20th March, 1978. Pending the said Appeal, the present petitioners purchased the Land from the said Raghav Hira by a registered document. Feeling aggrieved by the order of the Deputy Collector, the said Raghav Hira and the petitioners preferred the above referred Revision Application No.151/1982 before the Tribunal, which came to be dismissed under the impugned judgment and order dated 23rd July, 1984. Therefore, the present petition.

Mr.Buch has submitted that the Land has wrongly been included in the holding of the said Raghav Hira. The Land was agreed to be sold by the said Raghav Hira to the present petitioners in the year 1958. An agreement for sale was executed by the said Raghav Hira in favour of the present petitioners on 13th March, 1958. In part performance of the said agreement for sale the possession of the Land was handed over to the petitioners. Thus, the petitioners have been in possession of the Land since the year 1958. The Land, therefore, can be said to have been transferred to the petitioners within the meaning of the Act in the year 1958 i.e. before the date of the Act. The petitioners, therefore, can be said to hold the land within the meaning of Section 2(15) of the Act since the year 1958. The Mamlatdar and ALT has failed to consider that the Land was of the holding of the petitioners. The same could not have been included in

the holding of the said Raghav Hira and could not have been held to be surplus land in the hands of the said Raghav Hira. In support of this argument, Mr.Buch has produced the Village Form No.7/12 indicating possession of the petitioners of the Land since the year 1962-63. He has also produced copy of the agreement for sale dated 13th March, 1958 and the receipt dated 30th December, 1959 for a sum of Rs.7,000=00 paid by the petitioners to the Transferor Raghav Hira. Mr.Buch has also relied upon the judgment of this Court in the matter of LAJJASHANKER KESHAVJI JOSHI VS. STATE OF GUJARAT [1985(2) G.L.R. 658].

The petition is contested by the learned AGP Mrs.Harsha Devani. She has submitted that the Land stood in the name of the said Raghav Hira. As per the statement made by the Talati, the petitioners' name did not appear on the revenue records even as occupants of the Land. Hence, it can not be believed that the Land was agreed to be sold to the petitioners in the year 1958 and that the petitioners were in possession of the Land since the year 1958 as averred. Besides, in answer to the public notice given under Section 20 of the Act, the petitioners did not appear before the Mamlatdar and ALT. Hence, the date of transfer should be that of the sale date i.e. 14th December, 1978. The said sale having been effected after the appointed day i.e. 1st April, 1976 requires to be ignored for the purpose of calculating the holding of the Transferor Raghav Hira, as envisaged under Section 7 of the Act. She has relied upon the judgment of the Hon'ble Supreme Court in the matter of STATE OF GUJARAT VS. NARGES K.PANTHAKY [1996(3) G.L.R. 517] and of this Court in the matters of JASHUBHAI HIRALAL GANDHI AND ORS. VS. COMPETENT AUTHORITY AND DEPUTY COLLECTOR, AHMEDABAD AND ORS. [1990(2) G.L.R. 865]; of V.K.PATEL AND ORS VS. STATE OF GUJARAT AND ANR. [1994(1) G.L.H. 182] and of NAVSARJAN INDUSTRIAL CO-OP. SOCIETY LTD. VS. STATE OF GUJARAT [1996(1) G.L.R. 320].

In the matter of Lajjashanker Keshavji Joshi (supra), this Court has considered the meaning of the word "transfer" within the meaning of the Act. It has been held that the word "transfer" for the purposes of the Act has a much wider connotation than the one under the Transfer of Property Act. Even an agreement for sale coupled with the transfer of possession would amount to a transfer within the meaning of the Act.

In the matter of State of Gujarat (supra), the Hon'ble Supreme Court has observed that the agreement for

sale was compulsorily registrable under Section 17 of the Registration Act, 1908. The agreement in question having not been registered, the owner was not divested of the right, title or interest in the land and continued to be the holder of the land under the Act. The Hon'ble Court accordingly directed the competent authority to determine the surplus land held by the concerned owner.

In the matter of V.K.Patel and Ors. (supra), the land in question was sold by the owner thereof to the petitioner after the appointed day and after the initiation of proceedings under Section 20 of the Act. The ultimate order of declaring the land to be surplus came to be challenged on the ground that the buyer of the land had not been given notice thereof. The Court negatived the contention and held that "...I find no provision in Section 20 of the Act providing for service of notice individually to all the persons affected. Sub section (1) of Section 20 of the Act makes down provision for issue of a public notice calling upon all the persons affected thereby to submit to the first authority their objections or suggestions, if any, within a period of one month from the date of publication of the list prepared under Section 13 thereof...Sub section (2) thereof speaks of issue of a notice to the landholder and not to each of the persons affected by the list prepared under Section 13 of the Act...In that view of the matter, the submission urged before me by Shri Hathi for the petitioners to the effect that the proceedings before the first authority stood vitiated for want of individual notice to the petitioners deserves to be rejected."

In the matter of Jashubhai Hiralal Gandhi (supra), the Division Bench of this Court has held that the purchaser of land after coming into force of the Urban Land (Ceiling and Regulation) Act, 1976 is incompetent to prefer appeal on his own behalf. Similar is the view expressed in the matter of Navsarjan Industrial Co-op. Society Ltd. (supra).

Admittedly, the petitioners purchased the land under a registered sale document on 14th December, 1978 i.e. long after the appointed day. While considering the extent of the holding of an owner under the Act, such a transfer is required to be ignored. In that case, the petitioners shall have no locus standi to challenge the order of the Mamlatdar and ALT either.

However, the question is whether the Land can be said to have been transferred on 14th December, 1978, the date on which the sale document was executed or in the

year 1958 when the land is alleged to have been agreed to be sold to the petitioners and the handing over of the possession thereof. If the land were agreed to be sold in the year 1958 as alleged and the possession thereof was handed over to the present petitioners in the year 1958, the Land can be said to have been transferred in the year 1958. In that case, the transfer would have been taken into consideration by the Mamlatdar and ALT while computing the holding of the owner of the land. Further in that case the Land would be included in the holding of the Transferee i.e. the petitioners in the present case. On perusal of the record, it appears that the factum of agreement for sale was referred to by the said Raghav Hira in his evidence before the Mamlatdar and ALT. However, the genuineness of the said statement has not been examined either by the Mamlatdar and ALT or by the Appellate Authority or by the Tribunal. Besides, in answer to the public notice given under Section 20 of the Act, the petitioners too did not appear before the Mamlatdar and ALT to bringforth the correct facts before the said Tribunal. However, the learned advocate Mr.Buch has, as recorded hereinabove, produced some documents to bring home the issue. To me it appears that the interest of justice requires that all the documents be examined closely to determine whether the Land was transferred under the agreement for sale coupled with possession thereof in the year 1958 as alleged. It is also required to be ascertained whether in the year 1958 in the then State of Bombay the agreement for sale was compulsorily registrable or not.

Hence, in above view of the matter, the impugned judgment and order dated 23rd July, 1984 passed by the Tribunal in Revision Application No.TEN.B.R.151/1982, the judgment and order dated 20th March, 1979 passed by the Deputy Collector, Porbandar in Land Ceiling Appeal No.42/76-77 and the judgment and order dated 18th April, 1977 passed by the Mamlatdar and ALT (Land Ceiling), Manavadar in Ceiling Case No.35/1976 are quashed and set aside.

The Ceiling Case No.35/1976 is remanded to the Mamlatdar and ALT, Manavadar for hearing and decision afresh. The Mamlatdar and ALT shall, keeping in view the revenue records and in the light of the above discussion, examine whether the Land had, in fact, been transferred in the year 1958 under the agreement for sale coupled with the possession thereof as alleged by the petitioners. The Mamlatdar and ALT shall also examine whether the agreement for sale executed in the year 1958 in the State of Bombay was compulsorily registrable or

not. In the event, it is found that the Land was transferred in the year 1958 as contemplated under the Act, the Land shall be excluded from the holding of the owner thereof i.e. Raghav Hira and shall be included in the holding of the present petitioners. In that case, the Mamlatdar and ALT shall also examine whether on the appointed day the petitioners were holding agricultural land in excess of the ceiling limit in accordance with the provisions of the Act.

Pending the Ceiling Case before the Mamlatdar and ALT, the petitioners shall not transfer or alienate or part with the possession of the Land in any manner, nor shall the petitioners create a right of the third party. The petitioners shall not use the Land for any purpose other than the agricultural purpose.

The petition is allowed to the above extent. Rule is made absolute. There shall be no order as to costs. The Registry shall send the writ forthwith.

(Ms. R.M. Doshit, J.)

/sakkaf